

Appendix A - Definitions

Administrative Lead Time

That period of time from initiation of the requirement by the user to issuance of an award (contract or purchase order).

Agreement

A duly executed and legally binding contract. A consensus of two or more minds in respect of anything done or to be done.

Appeal

Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 2.2-43364 or 2.2-4365 of the *Virginia Public Procurement Act*.

Bartering

The act of exchanging one good or service for another, without the exchange of money.

Best and Final Offer

The last offer provided by an offeror in response to a Request for Proposals. If a best and final offer is requested, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on the rescoring of the best and final offers.

Bid

A competitively prices offer made by an intended seller, usually in reply to an invitation for bids. A price offer made at a public auction.

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Bid Bond

An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid.

Bidder

One who submits a competitively prices offer in response to an invitation for bids.

Boiler Plate

A slang word for terms and conditions.

Blanket Purchase Agreement (BPA)

An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirement for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit of the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period and specifically identifies those persons authorized to accept goods. A BPA may also contain other terms and conditions, such as the discount or specific price list that applies to purchases made under the agreement and what items or services are included (or excluded) under the agreement.

Broker

A person or agent acting as an independent manufacturer's or distributor's representative dealing in products or goods normally sold through the brokerage process in which there is a previously established relationship with the supplier before the bid is submitted.

Charge Card

In the context of this manual, a charge card is a Small Purchase Charge Card (SPCC), used for small purchases (\$5,000 or less) of frequent, over-the-counter, Maintenance, Repair, and Operating (MRO) items used in the daily operations of the CSB and for placing orders up to \$5,000 against term contracts. It is NOT a credit card.

Collusion

A secret agreement or cooperation between two or more parties to accomplish a fraudulent, deceitful, or unlawful purpose.

Collusive Bidding

An unethical and illegal practice in which suppliers act in collusion to “fix” their bids in a collectively advantageous manner.

Competitive Bidding

The offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

Competitive Negotiation

A method for the procurement of goods and services, usually of a highly complex and technical nature whereby qualified individuals or firms are solicited by means of a Request for Proposals. Negotiations are conducted with selected offerors and the best offer, as judged against criteria contained in the Request for Proposal, is accepted and an award issued.

Competitive Sealed Bid

A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline for the receipt of all bids. Competitive bidding is the preferred method of procurement for goods and non-professional services amounting to \$50,000 or more. Competitive sealed bidding shall not be used to contract for professional services.

Confirming Purchase Order

A purchase order issued after the fact by a procuring agency to a vendor for goods or services ordered orally or by some other informal means. The order should be marked "CONFIRMING ORDER. DO NOT DUPLICATE".

Consideration

Something of value given for a promise to make the promise binding. One of the essentials of a legal contract.

Construction

Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. (See Section 2.2-4301 of the *Code of Virginia*.)

Construction Management Contract

A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

Consulting Services

Advice or assistance of a purely advisory nature provided for a predetermined fee to an agency by an outside individual, firm, or organization under contract to that agency.

Consumer Price Index (CPI)

The Consumer Price Index is a measure of the average change in prices over time in a fixed market basket of goods and services. Two CPI's are published: (1) the CPI for All Urban consumers (CPI-U) which covers about 80% of the

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total populations and (2) the CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32% of the total population. The CPI is based upon prices of food, clothing, shelter, transportation medical care, and other goods and services that people buy for day-to-day living.

Contract

Contract (noun) - A legally binding promise, enforceable by law. An agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration. Contracts are any type of agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction.

Contract (verb) - The making of an agreement for consideration.

Contract Administration

The management of all facets of a contract to assure that the Contractor's performance is in accordance with the contractual commitments and that the obligations of the Contractor under the terms and conditions of the contract are fulfilled.

Contract Management

The management of the organization's contracts and contract-related activities which may include accounting, administration, auditing, grants management, law, negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination and other business activities.

Contract, Cost-Plus-A-Fixed-Fee

A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

Contract, Cost-Plus-A-Percentage-of-Cost

A form of contract which provides for a fee or profit at a specified percentage of the contractor's actual cost of accomplishing the work. Except in the case of emergency affecting the public health, safety or welfare and for some insurance contracts, no public contract shall be awarded on the basis of cost plus a percentage of cost. (See Section 2.2-4331 of the *Code of Virginia*.)

Contract, Design-Build

A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Contract, Fixed Price

A contract which provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

Contract, Fixed Price, Incentive

A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

Contract, Fixed-Price With Escalation/De-escalation

A fixed-price type of contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies (such as fluctuations in material costs and labor rates) specifically defined in the contract.

Contract, Requirements Type

A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum or minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

Contract, Service

A contract for work to be performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials or supplies. The "rule-of-thumb" is that if the cost of the service provided exceeds the cost of goods that are incidental to the contract, it is a service contract.

Contract, Time and Material

A contract providing for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit) and material at cost or at some bid percentage discount from manufacturer's catalog or list prices

Contractor

An individual or firm that has entered in an agreement to provide goods or services to the CSB.

Cooperative Procurement

A procurement by a public body with one or more other public bodies, for the purpose of combining requirements for the purchase of like goods and/or services in order to increase efficiency and/or reduce administrative expenses.

CORPRINT

Virginia Department of Corrections, Correctional Enterprises, Printing Facilities.

Cure Notice

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A notice either oral or in writing that informs the Contractor that he or she is in default and states what the Contractor has to do to correct the deficiency. If the notice is oral it should be confirmed in writing.

Debarment

Action taken to exclude individuals or firms for cause from contracting with the CSB for particular types of supplies and/or services for specified periods of time. (See Section 2.2-4321 of the *Code of Virginia*.)

Default

Failure of a contractor to comply with the terms and conditions of a contract.

Design Specification

A purchase specification setting forth the essential characteristics that an item bid must possess to be considered for award.

Designated Public Area

An area that is available to the public during normal business hours and is the area designated by the CSB for the posting of procurement solicitations and notices.

Drug Free Workplace

A site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during performance of a contract.

Emergency

An occurrence of a serious and urgent nature that demands immediate action.

Ethics

Pertaining to or relative to moral action, conduct, motive or character; professionally right or befitting; conforming to professional standards of conduct. The *Virginia Public Procurement Act* covers "Ethics in Public Contracting" in Sections 2.2-4367 through 2.2-4377.

Evaluation of Bids

The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bid relating to selection for award.

Expedite

The act of contacting a supplier or carrier with the goal of *speeding up* the delivery date (see also Follow-Up).

Fair Market Value

Lowest purchase price paid by public bodies for like items or services purchased in a similar quantity within the last six months. If this information is not available, telephone requests for non-binding quotes may be utilized.

Follow-Up

An activity that monitors the status of a purchase to ensure that specified delivery schedules are met.

Force Majeure

An irresistible or extraordinary force, natural event, or effect that cannot be reasonably anticipated or foreseen, prevented, or controlled. An act of God.

General Terms and Conditions

Standard clauses and requirements incorporated into all solicitations (IFB/RFP) and resulting contracts which are derived from laws, or administrative procedures of the public body. (Also called "Boiler Plate".)

Goods

Material, equipment, supplies, printing, and automated data processing hardware and software. (Section 2.2-4301 of the *Code of Virginia*.)

Grant (Grant-in-Aid)

For the purposes of this manual, these are fund transfers made by one party to another (e.g., Federal to State or Local Government) for the procurement of goods and/or services, that may be undertaken for the purpose of a public interest, benefit, or undertaking, as specified under the terms of the agency granting the use of funds.

Hazardous Material

A substance or material which has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

Informality

A minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bids or the Request for Proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods or services being procured. (See Section 2.2-4301 of the *Code of Virginia*.)

Inspection

Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

Invitation for Bids (IFB)

A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services.

Late Bid or Proposal

A bid or proposal which is received at the place designated in the Invitation for Bids or Request for Proposals after the deadline established by the solicitation.

Latent Defect

A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

Life Cycle Costing

A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

Liquidated Damages

A sum stated in a contract, to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the CSB, and not be calculated simply to impose a penalty on the contractor.

Minority-owned/controlled Business

Defined as a business enterprise that is owned or controlled by one of the following ethnic groups: Blacks, Hispanics, Asian Americans, American Indians, Eskimos, and Aleuts.

Multiple Award

The award of contracts to more than one bidder. When an Invitation for Bids, in its terms and conditions so provides, awards may be made to more than one bidder. (See Section 2.2-4301 of the *Code of Virginia*.) This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract.

Negotiation

A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach an agreement, or settlement of, a matter of common concern, on terms that are mutually beneficial and satisfactory to both.

Non-Competitive Negotiation

The process of arriving at an agreement through discussion and compromise when only one source is practically available.

Nonprofessional Services

Any services not specifically identified as professional services in the definition of professional services. (See Section 2.2-4301 of the *Code of Virginia*.)

Notice of Award

A written notification to a vendor stating that the vendor has received an award of a contract.

Notice of Intent to Award

A written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. The decision may be changed prior to the actual award of a contract or purchase order.

Offeror

A vendor who makes an offer in response to a Request for Proposal.

Order/Ship Time

Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point.

Payment Bond, for Labor and Material

A bond required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract.

Performance Bond

A contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the public body from loss due to his/her inability to complete the contract in accordance with its terms and conditions.

Performance Specification

A specification setting forth performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Potential Bidder or Offeror

A vendor who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such

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contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive bidding or competitive negotiation. (See Section 2.2-4301 of the *Code of Virginia*.)

Pre-bid or Pre-proposal Conference

Meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical considerations, specifications and standards relative to the proposed procurement.

Prequalification

A procedure to prequalify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been prequalified.

Qualified Products List (QPL): A list of products that have been tested and approved based on written prequalification procedures.

Qualified Contractors List (QCL): A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

Printing

The process or business of producing printed material by means of a printing press, copier or similar means or all copies of a publication produced by such means.

Procurement

The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition or purchase request, through receipt and acceptance of delivery and processing of a final invoice for payment.

Professional Services

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Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering. (See Section 2.2-4301 of the *Code of Virginia*.)

Proposal

An offer made by one party to another as a basis for negotiations, prior to creation of into a contract.

Proprietary Specification

One that restricts the acceptable products or services to that of one manufacturer or vendor. A common example would be a specification by brand name which excludes consideration of proposed "equals". Although all sole source specifications are proprietary, all proprietary specifications are not sole source. Proprietary items are available from several distributors through competitive bidding.

Protest

A complaint about a governmental administrative action or decision brought by a bidder or offeror to the appropriate administrative section with the intention of receiving a remedial result.

Public Bid Opening

The process of opening and reading bids at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.

Public Body

Includes any agency, institution or political subdivision (including Community Services Boards) created by law to perform some governmental duty. (See Section 11-37 of the *Code of Virginia*.)

Public Posting

The display of procurement notices in an area or on a board designated and regularly used for that purpose that is available to the public during normal working hours.

Purchase Order

A document which serves as notice to a vendor that an award has been made and that performance can be initiated under the terms and conditions of the contract.

Qualified Contractors List (QCO)

A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

Qualified Products List (QPL)

A list of products that have been tested and approved based on written prequalification procedures.

Regular Dealer

A person or firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Request for Information (RFI)

An informal document issued when a public body is not aware of the products or services available in the market which may satisfy its requirements. An RFI requests information which can be used either to determine that a competitive solicitation (IFB or RFP) is practical or that competition is not available. An RFI cannot be made into an agreement; however, in the event that competition is not available, the results of an RFI can be used in writing a justification of sole source.

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Request for Proposals (RFP)

All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure permits negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

Responsible Bidder or Offeror

A person or firm who has the capability in all respects to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified if required. (See Section 2.2-4301 of the *Code of Virginia*.)

Responsive Bidder

A person or firm who has submitted a bid which conforms in all material respects (signature, submitting required information, etc.) to the Invitation for Bids. (See Section 2.2-4301 of the *Code of Virginia*.)

Restocking Charge

Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of any item to inventory.

Reverse Auctioning

A procurement method wherein bidders may be invited to bid on specified goods or nonprofessional services (but not professional services) through real-time bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

Sealed Bid

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A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and opening of all bids.

Services

Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies. (See Section 2.2-4301 of the *Code of Virginia*.) As a "rule of thumb", if the amount of equipment, materials or supplies amounts to less than 50% of the total value of the contract, the equipment, materials or supplies are considered incident to the performance of the contract and the contract is considered to be for services rather than goods.

Sheltered Workshops

A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status. (See Section 2.2-4301 of the *Code of Virginia*.)

Single Response

A single response to a competitive solicitation. Prior to establishing a contract or issuing a purchase order based upon a single response, a determination should be made, in writing, that the price(s) quoted are reasonable and in line with the market.

Small Business

Corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

Software

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Software includes all applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, data base management systems, file back-up and recovery, job accounting, operating systems, programming aids and development systems and soft-merge utilities.

Sole Source

A product or service which is practicably available only from one source.

Solicitation

An Invitation for Bids (IFB), a Request for Proposals (RFP), telephone calls, or any other document issued by a procurement office to obtain bids or proposals for the purpose of entering into a contract.

Special Terms and Conditions

Special clauses pertaining to a specific procurement which may supplement or in some cases supersede one or more general terms and conditions.

Specification

A description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. A specification may describe the performance parameters which a supplier has to meet, or it may provide a complete design disclosure of the work or job to be done. Specifications for service contracts normally take the form of a statement of work.

Spot Purchase

A one-time purchase made in the open market. If it is under \$50,000, it may be made in accordance with the applicable small purchase procedures. If it is \$50,000 or more, it must be made by competitive sealed bidding or by an exception thereto (RFP, sole source, etc.) authorized by law.

Surplus Property

Property which is in excess of the needs of the public body and which is not required for its foreseeable need. The property may be used or new, but possess some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content.

Suspension

Action taken to temporarily disqualify a vendor for cause from doing business with the CSB.

Technical Proposal

An unpriced proposal which sets forth in detail that which a vendor proposes to furnish in response to a solicitation.

Technical Specifications

Specifications that establish the material and performance requirements of goods and services.

Term Contracting

A technique by which a source of supply is established for a specific period of time. Term contracts characteristically are established through competitive sealed bidding and usually are based on indefinite quantities to be ordered "as needed", although such contracts can specify definite quantities with deliveries extended over the contract period. Also, see Contract, Requirements Type.

Termination for Convenience

The termination, by a public body, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor's claims in accordance with appropriate policy and procedures. In order to exercise Termination

for Convenience, this right must be reserved in the policy of the CSB of the terms and conditions of the solicitation.

Termination for Default

The cessation or cancellation by the purchasing office, in whole or in part, of a contract because of the contractor's failure to perform in accordance with the contract's terms and conditions.

Unsealed Bid

An unsealed written offer conveyed by letter, telegraph, informal bid or other means. The bids are normally opened and recorded as received.

Used Equipment

Equipment which has been previously owned and used and is offered "where is" "as is". It does not include demonstration, factory rebuilt or remanufactured equipment marketed through normal distribution outlets..

Value Analysis

A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

Vendor

One who sells goods or services.

Virginia Public Procurement Act

Chapter 43 of Title 2.2, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from non-governmental sources.

Will

As used in an Invitation for Bids or Request for Proposals, the word “will” is normally used to convey an obligation incurred by the agency or owner.

Women-owned/controlled Business

Business enterprise that is at least 51 percent owned by a woman or women who also control and operate it. In this context, “control” means exercising the power to make policy decisions, and “operate” means being actively involved in the day-to-day management.